

# FINANCIAL INFORMATION PRIVACY ACT OF 1998

SEPTEMBER 25, 1998.—Ordered to be printed

Mr. BLILEY, from the Committee on Commerce,  
submitted the following

## REPORT

[To accompany H.R. 4321]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 4321) to protect consumers and financial institutions by preventing personal financial information from being obtained from financial institutions under false pretenses, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Financial Information Privacy Act of 1998”.

**SEC. 2. FINANCIAL INFORMATION PRIVACY.**

(a) IN GENERAL.—The Consumer Credit Protection Act (15 U.S.C. 1601 et seq.) is amended by adding at the end the following:

**“TITLE X—FINANCIAL INFORMATION PRIVACY  
PROTECTION**

“Sec.

“1001. Short title.

“1002. Definitions.

“1003. Privacy protection for customer information of financial institutions.

“1004. Administrative enforcement.

“1005. Civil liability.

“1006. Criminal penalty.

“1007. Relation to State laws.

“1008. Agency guidance.

**“§ 1001. Short title**

“This title may be cited as the ‘Financial Information Privacy Act’.

**“§ 1002. Definitions**

“For purposes of this title, the following definitions shall apply:

“(1) CUSTOMER.—The term ‘customer’ means, with respect to a financial institution, any person (or authorized representative of a person) to whom the financial institution provides a product or service, including that of acting as a fiduciary.

“(2) CUSTOMER INFORMATION OF A FINANCIAL INSTITUTION.—The term ‘customer information of a financial institution’ means any information maintained by or for a financial institution which is derived from the relationship between the financial institution and a customer of the financial institution and is identified with the customer.

“(3) DOCUMENT.—The term ‘document’ means any information in any form.

“(4) FINANCIAL INSTITUTION.—

“(A) IN GENERAL.—The term ‘financial institution’ means any institution engaged in the business of providing financial services to customers who maintain a credit, deposit, trust, or other financial account or relationship with the institution.

“(B) CERTAIN FINANCIAL INSTITUTIONS SPECIFICALLY INCLUDED.—The term ‘financial institution’ includes any depository institution (as defined in section 19(b)(1)(A) of the Federal Reserve Act), any broker or dealer, any investment adviser or investment company, any insurance company, any loan or finance company, any credit card issuer or operator of a credit card system, and any consumer reporting agency that compiles and maintains files on consumers on a nationwide basis (as defined in section 603(p)).

“(C) SECURITIES INSTITUTIONS.—For purposes of subparagraph (B)—

“(i) the terms ‘broker’ and ‘dealer’ have the meanings provided in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

“(ii) the term ‘investment adviser’ has the meaning provided in section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)); and

“(iii) the term ‘investment company’ has the meaning provided in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3).

“(D) FURTHER DEFINITION BY REGULATION.—The Federal Trade Commission, after consultation with Federal banking agencies and the Securities and Exchange Commission, may prescribe regulations clarifying or describing the types of institutions which shall be treated as financial institutions for purposes of this title.

**“§ 1003. Privacy protection for customer information of financial institutions**

“(a) PROHIBITION ON OBTAINING CUSTOMER INFORMATION BY FALSE PRETENSES.—It shall be a violation of this title for any person to obtain or attempt to obtain, or cause to be disclosed or attempt to cause to be disclosed to any person, customer information of a financial institution relating to another person—

“(1) by making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a financial institution;

“(2) by making a false, fictitious, or fraudulent statement or representation to a customer of a financial institution; or

“(3) by providing any document to an officer, employee, or agent of a financial institution, knowing that the document is forged, counterfeit, lost, or stolen, was fraudulently obtained, or contains a false, fictitious, or fraudulent statement or representation.

“(b) PROHIBITION ON SOLICITATION OF A PERSON TO OBTAIN CUSTOMER INFORMATION FROM FINANCIAL INSTITUTION UNDER FALSE PRETENSES.—It shall be a violation of this title to request a person to obtain customer information of a financial institution, knowing that the person will obtain, or attempt to obtain, the information from the institution in any manner described in subsection (a).

“(c) NONAPPLICABILITY TO LAW ENFORCEMENT AGENCIES.—No provision of this section shall be construed so as to prevent any action by a law enforcement agency, or any officer, employee, or agent of such agency, to obtain customer information of a financial institution in connection with the performance of the official duties of the agency.

“(d) NONAPPLICABILITY TO FINANCIAL INSTITUTIONS IN CERTAIN CASES.—No provision of this section shall be construed so as to prevent any financial institution, or any officer, employee, or agent of a financial institution, from obtaining customer information of such financial institution in the course of—

“(1) testing the security procedures or systems of such institution for maintaining the confidentiality of customer information;

“(2) investigating allegations of misconduct or negligence on the part of any officer, employee, or agent of the financial institution; or

“(3) recovering customer information of the financial institution which was obtained or received by another person in any manner described in subsection (a) or (b).

“(e) NONAPPLICABILITY TO INSURANCE INSTITUTIONS FOR INVESTIGATION OF INSURANCE FRAUD.—No provision of this section shall be construed so as to prevent any insurance institution, or any officer, employee, or agent of an insurance institution, from obtaining information as part of an insurance investigation into criminal activity, fraud, material misrepresentation, or material nondisclosure that is authorized for such institution under State law, regulation, interpretation, or order.

“(f) NONAPPLICABILITY TO CERTAIN TYPES OF CUSTOMER INFORMATION OF FINANCIAL INSTITUTIONS.—No provision of this section shall be construed so as to prevent any person from obtaining customer information of a financial institution that otherwise is available as a public record filed pursuant to the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934).

#### “§ 1004. Administrative enforcement

“(a) ENFORCEMENT BY FEDERAL TRADE COMMISSION.—Except as provided in subsection (b), compliance with this title shall be enforced by the Federal Trade Commission in the same manner and with the same power and authority as the Commission has under the title VIII, the Fair Debt Collection Practices Act, to enforce compliance with such title.

“(b) ENFORCEMENT BY OTHER AGENCIES IN CERTAIN CASES.—

“(1) IN GENERAL.—Compliance with this title shall be enforced under—

“(A) section 8 of the Federal Deposit Insurance Act, in the case of—

“(i) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

“(ii) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act, by the Board;

“(iii) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System and national non-member banks) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; and

“(iv) savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation, by the Director of the Office of Thrift Supervision; and

“(B) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union.

“(2) VIOLATIONS OF THIS TITLE TREATED AS VIOLATIONS OF OTHER LAWS.—For the purpose of the exercise by any agency referred to in paragraph (1) of its powers under any Act referred to in that paragraph, a violation of this title

shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in paragraph (1), each of the agencies referred to in that paragraph may exercise, for the purpose of enforcing compliance with this title, any other authority conferred on such agency by law.

“(3) RESTITUTION.—In the case of any failure by an entity referred to in paragraph (1) to comply with the requirements of this title, an agency referred to in such paragraph may require such entity to make restitution to any person harmed by such failure in the manner provided under section 8(b)(6)(A) of the Federal Deposit Insurance Act or section 206(e)(3)(A) of the Federal Credit Union Act, as the case may be, without regard to clauses (i) and (ii) of such sections, and in an amount equal to the sum of the amounts determined under each of the following subparagraphs:

“(A) ACTUAL DAMAGES.—The greater of—

“(i) the amount of any actual damage sustained by the person as a result of such failure; or

“(i) any amount received by the entity which failed to comply with this title, including an amount equal to the value of any nonmonetary consideration, as a result of the action which constitutes such failure.

“(B) ADDITIONAL DAMAGES.—Such additional amount as the agency may determine to be appropriate under the circumstances.

“(c) STATE ACTION FOR VIOLATIONS.—

“(1) AUTHORITY OF STATES.—In addition to such other remedies as are provided under State law, if the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating this title, the State—

“(A) may bring an action to enjoin such violation in any appropriate United States district court or in any other court of competent jurisdiction;

“(B) may bring an action on behalf of the residents of the State to recover damages of not more than \$1,000 for each violation; and

“(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorney fees as determined by the court.

“(2) RIGHTS OF FEDERAL REGULATORS.—

“(A) PRIOR NOTICE.—The State shall serve prior written notice of any action under paragraph (1) upon the Federal Trade Commission and—

“(i) in the case of an action which involves a financial institution described in section 1004(b)(1), the agency referred to in such section with respect to such institution; or

“(ii) in the case of an action which involves a financial institution subject to regulation by the Securities and Exchange Commission, such Commission.

The State shall provide the Federal Trade Commission and any such agency with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action.

“(B) RIGHT TO INTERVENE.—The Federal Trade Commission or an agency described in subsection (b) shall have the right—

“(i) to intervene in an action under paragraph (1);

“(ii) upon so intervening, to be heard on all matters arising therein;

“(iii) to remove the action to the appropriate United States district court; and

“(iv) to file petitions for appeal.

“(3) INVESTIGATORY POWERS.—For purposes of bringing any action under this subsection, no provision of this subsection shall be construed as preventing the chief law enforcement officer, or an official or agency designated by a State, from exercising the powers conferred on the chief law enforcement officer or such official by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

“(4) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION PENDING.—If the Federal Trade Commission or any agency described in subsection (b) has instituted a civil action for a violation of this title, no State may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Federal Trade Commission or such agency for any violation of this title that is alleged in that complaint.

“(d) NOTICE TO SEC OF ACTIONS.—The Federal Trade Commission shall notify the Securities and Exchange Commission whenever the Federal Trade Commission initi-

ates an investigation with respect to a financial institution subject to regulation by the Securities and Exchange Commission.

**“§ 1005. Civil liability**

“Any person, other than a financial institution, who fails to comply with any provision of this title with respect to any financial institution or any customer information of a financial institution shall be liable to such financial institution or the customer to whom such information relates in an amount equal to the sum of the amounts determined under each of the following paragraphs:

“(1) ACTUAL DAMAGES.—The greater of—

“(A) the amount of any actual damage sustained by the financial institution or customer as a result of such failure; or

“(B) any amount received by the person who failed to comply with this title, including an amount equal to the value of any nonmonetary consideration, as a result of the action which constitutes such failure.

“(2) ADDITIONAL DAMAGES.—Such additional amount as the court may allow.

“(3) ATTORNEYS’ FEES.—In the case of any successful action to enforce any liability under paragraph (1) or (2), the costs of the action, together with reasonable attorneys’ fees.

**“§ 1006. Criminal penalty**

“(a) IN GENERAL.—Whoever knowingly and intentionally violates, or knowingly and intentionally attempts to violate, section 1003 shall be fined in accordance with title 18, United States Code, or imprisoned for not more than 5 years, or both.

“(b) ENHANCED PENALTY FOR AGGRAVATED CASES.—Whoever violates, or attempts to violate, section 1003 while violating another law of the United States or as part of a pattern of any illegal activity involving more than \$100,000 in a 12-month period shall be fined twice the amount provided in subsection (b)(3) or (c)(3) (as the case may be) of section 3571 of title 18, United States Code, imprisoned for not more than 10 years, or both.

**“§ 1007. Relation to State laws**

“(a) IN GENERAL.—This title shall not be construed as superseding, altering, or affecting the statutes, regulations, orders, or interpretations in effect in any State, except to the extent that such statutes, regulations, orders, or interpretations are inconsistent with the provisions of this title, and then only to the extent of the inconsistency.

“(b) GREATER PROTECTION UNDER STATE LAW.—For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this title if the protection such statute, regulation, order, or interpretation affords any person is greater than the protection provided under this title.

**“§ 1008. Agency guidance**

“In furtherance of the objectives of this title, each Federal banking agency (as defined in section 3(z) of the Federal Deposit Insurance Act) and the Securities and Exchange Commission or self-regulatory organizations, as appropriate, shall review regulations and guidelines applicable to financial institutions under their respective jurisdictions and shall prescribe such revisions to such regulations and guidelines as may be necessary to ensure that such financial institutions have policies, procedures, and controls in place to prevent the unauthorized disclosure of customer financial information and to deter and detect activities proscribed under section 1003.”

(b) REPORT TO THE CONGRESS.—Before the end of the 18-month period beginning on the date of the enactment of this Act, the Comptroller General, in consultation with the Federal Trade Commission, Federal banking agencies, the Securities and Exchange Commission, and appropriate Federal law enforcement agencies, shall submit to the Congress a report on the following:

(1) The efficacy and adequacy of the remedies provided in the amendments made by subsection (a) in addressing attempts to obtain financial information by fraudulent means or by false pretenses.

(2) Any recommendations for additional legislative or regulatory action to address threats to the privacy of financial information created by attempts to obtain information by fraudulent means or false pretenses.

(c) ANNUAL REPORT BY ADMINISTERING AGENCIES.—The Federal Trade Commission, the Attorney General, and each of the agencies referred to in section 1004(b)(1) of Financial Information Privacy Act (as added by this Act) shall submit to Congress an annual report on number and disposition of all enforcement actions taken pursuant to such Act.

## PURPOSE AND SUMMARY

H.R. 4321, the Financial Information Privacy Act of 1998, will protect consumers and financial institutions by preventing personal confidential information from being obtained from financial institutions under false pretenses. H.R. 4321 would achieve this goal by increasing the penalties for fraudulent information gathering, enhancing the ability of Federal and State enforcement agencies to prosecute such fraudulent activities, and expanding the ability of injured consumers and financial institutions to obtain restitution for their losses.

As amended by the Committee on Commerce, H.R. 4321 makes it a violation of Federal law to attempt to obtain or cause to be disclosed customer information of a financial institution by making fraudulent representations or by using documents that are forged or improperly obtained or that contain false statements. H.R. 4321 also makes it a violation to request that another person obtain a consumer's confidential financial information knowing that the attempt to obtain such information is done in a fraudulent manner. These prohibitions are intended to prevent companies and individuals from deceiving financial institutions into providing confidential customer information.

H.R. 4321 provides several exceptions to the general prohibition against making false representations to obtain confidential financial information. The prohibition does not apply to law enforcement officials and agents in connection with the performance of their official duties. A similar exception is authorized for financial institutions that are testing their internal security procedures, investigating allegations of improper conduct of an employee or agent, or attempting to recover information that was fraudulently obtained from them. Insurance companies and their agents are given a general exception to investigate insurance fraud or other consumer misconduct, but only as authorized under State law. This exception is intended to protect State laws which are variations of the model code established by the National Association of Insurance Commissioners allowing "pretext" interviews by insurance entities in certain cases to combat consumer fraud and other misrepresentation or omissions related to insurance transactions.

The legislation delegates enforcement of H.R. 4321 to the Federal Trade Commission (FTC) for those entities under its jurisdiction, in a manner coterminous with its authority under the Fair Debt Collection Practices Act. Compliance by banks, savings associations, and credit unions is enforced by the appropriate Federal banking agency (the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration) with violations of H.R. 4321 being deemed a violation of the Federal Deposit Insurance Act or the Federal Credit Union Act (according to the regulated depository entity). These Federal banking agencies are given explicit authority to provide for restitution of persons who have suffered harm as a result of violations of H.R. 4321, including actual damages sustained by such persons, disgorgement of monetary or other value received by the violator as a result of the violation, and such other

additional amount as the regulator deems appropriate. The legislation also authorizes the States to bring civil or injunctive actions against any entity violating this Act, although with damages limited to \$1,000 per violation plus reasonable attorneys fees, and prior notice to the FTC or Securities and Exchange Commission (SEC) required as appropriate.

H.R. 4321 also grants a private right of action to consumers and financial institutions whose information has been fraudulently obtained, imposing civil liability on any person other than a financial institution that violates this Act with damages up to the greater of actual damages or the remuneration of the fraudulent party, as well as reasonable attorneys fees, the cost of the action, and any additional awards granted by the court. Nothing in the legislation restricts civil remedies available under any other provision of law.

For persons who knowingly and intentionally attempt to violate this Act, H.R. 4321 establishes criminal penalties for commission of a felony of up to 5 years imprisonment plus fines of up to \$250,000 for individuals and \$500,000 for corporations, with aggravated cases (significant multiple offenses or a violation of multiple laws) resulting in doubled penalties.

State authority is preempted by H.R. 4321 only to the extent that the State's laws, regulations, orders, or interpretations are inconsistent with the Act. If State authority provides greater protection to any person, then that State authority remains controlling law.

H.R. 4321 requires each Federal banking agency and the SEC or self-regulatory organizations to review their regulations and guidelines governing the protection of confidential consumer financial information and to revise such provisions as necessary to ensure appropriate confidentiality safeguards. Those safeguards will include those policies, procedures, and controls as would reasonably be expected to prevent and detect, insofar as practicable, activities proscribed by the legislation. Within 18 months, the Comptroller General will consult with the FTC, SEC, and appropriate Federal banking and law enforcement agencies and report to Congress on the effectiveness and adequacy of this Act in preventing the fraudulent obtainment of confidential consumer financial information, as well as any recommendations for additional legislative or regulatory action that is appropriate. The regulatory bodies charged with enforcing the bill must submit to Congress an annual report on their enforcement actions pursuant to the legislation.

#### BACKGROUND AND NEED FOR LEGISLATION

The evolution of electronic commerce has brought privacy issues, especially financial information privacy, into the media spotlight. An increasing amount of private consumer data is being stored by financial institutions, including asset and investment accounts, payments or loans related to commercial transactions, and sensitive insurance-related information. Consumers have a reasonable expectation of confidentiality for their information. However, this confidentiality is being constantly breached by unscrupulous individuals.

Private detectives, information brokers, and lawyers, among others, have been exploiting the information explosion, using false

identities or other deceptive pretexts to wrongly obtain information about targeted victims from financial institutions. These “pretexters” might use information gained from one source, such as a social security number or mother’s maiden name, to gather information from a second—such as an investment account, credit card limit, or savings balance. Financial institutions are being placed in the increasingly difficult position of trying to maintain the balance between providing simple and remote access by legitimate consumers to their financial accounts while still preventing the unauthorized access to confidential information by skillful pretexters.

The FTC currently has limited powers under the Federal Trade Commission Act (FTCA) to act against persons who use deceptive practices to obtain confidential consumer information. Additionally, the use of false or deceptive methods to procure confidential financial information will often give rise to wire fraud, punishable under Title 18, United States Code. However, prosecution of fraudulent information brokers under Title 18 has not been frequent, and under current law, the FTC cannot impose civil penalties against an entity until after a second violation has occurred. Furthermore, the availability of criminal penalties and civil rights of action are limited. H.R. 4321 would make it clear that, with limited exceptions for financial institutions and law enforcement agents, using pretexting to fraudulently obtain confidential customer financial information is illegal, and immediately subject to a variety of criminal, civil, and administrative punishment.

In addition, H.R. 4321 recognizes the importance of financial institutions implementing strong internal controls to prevent unauthorized disclosure of their customers’ private financial information. The legislation requires financial regulatory agencies to review their confidentiality rules and guidelines and, if necessary, make adjustments in order to ensure that supervised financial institutions maintain appropriate privacy protections.

#### HEARINGS

Because of the severe time constraints of the Committee’s sequential referral, there were no hearings held on this legislation by the Committee on Commerce or its subcommittees.

#### COMMITTEE CONSIDERATION

On September 24, 1998, the Committee on Commerce met in open markup session and ordered H.R. 4321, the Financial Information Privacy Act of 1998, reported to the House, amended, by a voice vote, a quorum being present.

#### ROLLCALL VOTES

Clause 2(1)(2)(B) of rule XI of the Rules of the House requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. There were no recorded votes taken in connection with ordering H.R. 4321 reported. An Amendment in the Nature of a Substitute by Mr. Bliley was agreed to by a voice vote. An amendment to the Bliley Amendment in the Nature of a Substitute by Mr. Markey concerning civil liability, was not agreed to by a voice vote. A motion by Mr. Bliley to order H.R.



4321 reported to the House, amended, was agreed to by a voice vote, a quorum being present.

#### COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee has made findings that are reflected in this report.

#### COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Pursuant to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform and Oversight.

#### NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee finds that H.R. 4321, the Financial Information Privacy Act of 1998, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

#### COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

#### CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, September 25, 1998.*

Hon. TOM BLILEY,  
*Chairman, Committee on Commerce,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4321, the Financial Information Privacy Act of 1998.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Hadley (for federal costs), and Carolyn Lynch (for revenues).

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

#### *H.R. 4321—Financial Information Privacy Act of 1998*

Summary: H.R. 4321 would prohibit obtaining or requesting a customer's personal financial information from a financial institu-

tion under false pretenses. For most purposes, the bill would be enforced by the Federal Trade Commission (FTC). The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), the National Credit Union Administration (NCUA), and the Securities and Exchange Commission (SEC) would implement H.R. 4321 as it applies to the financial institutions that those agencies regulate. The FTC would issue regulations defining the phrase “financial institution” as directed by the bill. Finally, H.R. 4321 would allow states to bring legal actions in federal district court against violators of the bill.

CBO estimates that implementing H.R. 4321 would increase discretionary spending by between \$500,000 and \$1 million a year over the 1999–2003 period. Such costs would be subject to the availability of appropriated funds. H.R. 4321 could affect direct spending and revenues; therefore, pay-as-you-go procedures would apply, but CBO estimates that any such effects would be less than \$500,000 in a year over the 1999–2003 period.

H.R. 4321 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: H.R. 4321 would make it a federal crime to obtain or request a customer’s personal financial information from a financial institution under false pretenses. Subject to the availability of appropriated funds, CBO estimates that implementing H.R. 4321 would increase the costs of the FTC, SEC, and NCUA by less than \$1 million a year over the 1999–2003 period. Violators would be subject to imprisonment and fines. As a result, the federal government would be able to pursue cases that it otherwise would not be able to prosecute. CBO expects that the government probably would not pursue many such cases, so we estimate that any increase in federal costs for law enforcement, court proceedings, or prison operations would not be significant. Any such additional costs would be subject to the availability of appropriated funds.

Because those prosecuted and convicted under H.R. 4321 could be subject to criminal fines, the federal government might collect additional fines if the bill is enacted. Collections of such fines are recorded in the budget as governmental receipts (revenues), which are deposited in the Crime Victims Fund and spent in the following year. CBO expects that any additional collections from enacting H.R. 4321 would be negligible, however, because of the small number of cases likely to be involved. Because any increase in direct spending would equal the fines collected with a one-year lag, the additional direct spending also would be negligible.

Both the OTS and the OCC charge fees to cover all their administrative costs; therefore, any additional spending by these agencies would have no net budgetary effect. That is not the case with the FDIC, however, which uses deposit insurance premiums paid by all banks to cover the expenses it incurs to supervise state-chartered banks. The bill would cause a small increase in FDIC spending, but would probably not affect its premium income. In any case, CBO estimates that H.R. 4321 would increase direct spending and offset-

ting receipts for those agencies by less than \$500,000 a year over the 1999–2003 period.

Budgetary effects on the Federal Reserve are recorded as changes in revenues. Based on information from the Federal Reserve, CBO estimates that enacting H.R. 4321 would reduce revenues by less than \$500,000 a year over the 1999–2003 period.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. CBO estimates that enacting H.R. 4321 would affect direct spending and governmental receipts but that there would be no significant impact in any year.

Intergovernmental and private-sector impact: H.R. 4321 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Previous CBO estimate: On August 21, 1998, CBO transmitted an estimate of H.R. 4321, the Financial Information Privacy Act of 1998, as ordered reported by the House Committee on Banking and Financial Services on August 5, 1998. That version of the bill would require the Federal Reserve System (instead of the FTC) to define which financial institutions would be affected by the bill and would not specifically include securities brokers (which are regulated by the SEC). CBO estimated that the House Committee on Banking and Financial Services' version of the bill would increase discretionary spending by less than \$500,000 a year, slightly less than the estimated costs for the Commerce Committee's version, because that previous version of the bill would not impose any costs on the SEC and would impose fewer costs on the FTC.

Estimate prepared by: Federal cost: Mark Hadley; and Revenues: Carolyn Lynch.

Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

#### FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

#### APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or

accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

##### *Sec. 1. Short title*

This section provides the short title of the bill, the “Financial Information Privacy Act of 1998.”

##### *Sec. 2. Financial information privacy*

This section amends the Consumer Credit Protection Act by adding a new title to be cited as “Title X—the Financial Information Privacy Act.” The new title is composed of eight sections:

*Sec. 1001. Short title.* This section provides the title’s short title, the “Financial Information Privacy Act.”

*Sec. 1002. Definitions.* This section defines several terms. The term “customer” is defined as any person to whom a financial institution provides a product or service, including that of acting as a fiduciary. It also defines the term “customer information of a financial institution” as any information maintained by or for a financial institution which is derived from the relationship between the financial institution and its customer and is identified with the customer, and the term “document” as information in any form.

Finally, the term “financial institution” is defined as any institution engaged in the business of providing financial services to customers who maintain a credit, deposit, trust, or other financial account or relationship with the institution, including but not limited to depository institutions (as defined in section 19(b)(1)(A) of the Federal Reserve Act); brokers and dealers (as defined in section 3 of the Securities Exchange Act of 1934); investment advisers (as defined in section 202(a)(11) of the Investment Advisers Act of 1940); investment companies (as defined in section 3 of the Investment Company Act of 1940); insurance companies; loan or finance companies; credit card issuers; operators of credit card systems; and consumer reporting agencies. In addition, the Federal Trade Commission (FTC), after consultation with Federal banking agencies and the Securities and Exchange Commission (SEC), may prescribe regulations further defining the types of institutions that are treated as “financial institutions” for purposes of this title.

*Sec. 1003. Privacy protection for customer information of financial institutions.* This section makes it unlawful for any person to obtain or attempt to obtain, or cause to be disclosed or attempt to cause to be disclosed to any person, customer information of a financial institution relating to another person by (1) making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a financial institution; (2) making a false, fictitious, or fraudulent statement or representation to a customer of a financial institution; or (3) providing any document to an officer, employee, or agent of a financial institution, knowing that the document is forged, counterfeit, lost, or stolen, was fraudulently obtained, or contains a false, fictitious, or fraudulent statement or representation.

This section also makes it unlawful to request a person to obtain customer information of a financial institution knowing that it was

obtained through any of the three methods described in this section.

The prohibitions specified in this section do not apply to any action by a law enforcement agency to obtain customer information of a financial institution in the performance of its official duties. For purposes of this section, the term “law enforcement agency” is intended to include Federal, State and local agencies, and specifically encompasses those agencies responsible for enforcing child-support obligations.

This section’s prohibitions do not apply to instances in which a financial institution or its officers, employees, or agents, obtain customer information of such financial institution in the course of (1) testing the security procedures or systems of such institution for maintaining the confidentiality of customer information; (2) investigating allegations of misconduct or negligence on the part of any officer, employee, or agent of the financial institution; or (3) recovering customer information of the financial institution which was obtained or received by another person in any manner described in this section. Thus, for example, when a fraud prevention unit of a financial institution succeeds in retrieving information from an information broker that has been obtained through fraud or deceit, the financial institution is not in violation of this statute. This “safe harbor” extends to agents or contractors retained by a financial institution to implement anti-fraud or self-testing programs.

This section’s prohibitions do not apply to instances in which an insurance institution or its officers, employees or agents, obtain information as part of an insurance investigation into criminal activity, fraud, material misrepresentation, or material nondisclosure that is authorized for such institution under State law, regulation, interpretation, or order. This section also does not apply to the obtaining of customer information of a financial institution that is otherwise available as a public record filed pursuant to the Federal securities laws.

The Committee does not intend that any provision of this section should be construed as limiting or in any way interfering with the sharing of information among affiliates or subsidiaries within a financial services institution as permitted under any other applicable law.

*Sec. 1004. Administrative enforcement.* This section assigns enforcement authority to the FTC and the Federal banking agencies according to their respective jurisdictions. The enforcement authority exercised by the FTC under this title is coextensive with its authority under the Fair Debt Collection Practices Act. In instances where depository institutions are implicated in obtaining information through fraudulent means, or requesting that such information be obtained knowing that fraudulent or deceptive methods will be used to collect it, the appropriate Federal banking agencies have the authority to enforce this Act. If a depository institution fails to comply with this title, the appropriate Federal banking agency has the authority to require that institution to make restitution to any person harmed by such failure. Restitution would occur in the manner provided under section 8(b)(6)(A) of the Federal Deposit Insurance Act or section 206(c)(3)(A) of the Federal Credit Union Act, as appropriate, without regard to clauses (i) and (ii) of such sections.

Restitution would include the greater of (1) the actual damage to the person harmed, or (2) the amount received by the entity which failed to comply, and such additional amount as the agency may determine to be appropriate under the circumstances.

This section further provides that in addition to such other remedies as are available under State law, the States have the authority to enforce this Act through actions to enjoin violations or recover damages of not more than \$1,000 for each violation. States are required to provide the FTC and the other Federal agencies, as appropriate, prior notice of such actions. The FTC and the other Federal agencies with enforcement authority under this section have the right to intervene in any action by a State to enforce this Act. This section does not limit investigations authorized by State law. When the FTC or any other Federal agency with enforcement authority under this section has instituted a civil action to enforce this Act, no State may, during the pendency of that action, bring its own action under this section against any defendant named in the Federal complaint for any act alleged in that complaint. The FTC shall notify the SEC when, pursuant to this title, it initiates an investigation of an entity regulated by the SEC.

*Sec. 1005. Civil liability.* This section provides that any person that is not a financial institution may be held civilly liable for violating this Act by a financial institution or a customer whose financial information was obtained unlawfully. The Act authorizes the recovery of (A) actual damages (1) in the amount sustained by the financial institution or customer as a result of the violation, or (2) in the amount of any compensation received by the defendant, including the value of any nonmonetary compensation, as a result of the violation, whichever is greater; (B) such additional damages as the court may allow; and (C) in the case of a successful action, the costs of the action, including reasonable attorneys' fees.

This section is intended to permit consumers and financial institutions who have been victimized by unscrupulous information brokers and others who traffic in fraudulently obtained financial information to hold those parties accountable. Affording injured private parties a right of action increases the likelihood that the Act's prohibitions will be vigorously enforced. For example, a financial institution will, in some instances, have a stronger incentive to proceed against an information broker or his client than a law enforcement agency or prosecutor operating with limited resources and forced to juggle competing priorities, particularly in those cases where the amount of monetary damages is minimal.

This section does not give rise to a private right of action against a financial institution from which customer information has been obtained in a manner proscribed by section 1003. This section does not affect any other civil remedies that may lie against any person, including financial institutions, under any other laws applicable to the conduct proscribed under this Act.

*Sec. 1006. Criminal penalties.* This section provides that persons violating or attempting to violate these provisions are subject to fines under title 18, United States Code (up to \$250,000 in the case of an individual or \$500,000 in the case of a corporation), or imprisonment for not more than 5 years, or both. It further subjects persons violating these provisions in the course of violations of, or at-

tempts to violate, other laws, as part of a pattern of illegal activity involving more than \$100,000 in a 12-month period, the doubling of fines or imprisonment for not more than 10 years, or both.

*Sec. 1007. Relation to State laws.* The bill does not supersede any State statutes, regulations, orders, or interpretations, except to the extent that they are inconsistent with the provisions of this Act, and then only to the extent of the inconsistency. A State statute, regulation, order, or interpretation is not inconsistent with the provisions of the legislation if the protection such statute, regulation, order, or interpretation affords any person is greater than the protection provided by this legislation.

*Sec. 1008. Agency guidance.* This section requires the Federal banking agencies (as defined in section 3(z) of the Federal Deposit Insurance Act) and the SEC or self-regulatory organizations, as appropriate, to review regulations and guidelines for financial institutions under their respective jurisdictions and prescribe revisions to such regulations and guidelines as may be necessary to ensure that such financial institutions have policies, procedures, and controls in place to prevent unauthorized disclosure of customer financial information and to assist those institutions in deterring and detecting activities proscribed in this Act. The Committee expects the appropriate examining authorities to include compliance with such guidelines and the adequacy of such internal controls in their examinations of these institutions.

The legislation requires the General Accounting Office, in consultation with the FTC, Federal banking agencies, the SEC, and appropriate Federal law enforcement agencies, to submit a report to Congress within 18 months of the date of enactment on (1) the efficacy and adequacy of this legislation in addressing attempts to obtain financial information by fraudulent means and false pretenses; and (2) any recommendations regarding additional legislation or regulations necessary to address threats to the privacy of financial information.

Entities charged with enforcing this title must provide annual reports to Congress on the number and disposition of all enforcement actions taken pursuant to the Act.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in *italic*):

### **TITLE X OF THE CONSUMER CREDIT PROTECTION ACT**

#### ***TITLE X—FINANCIAL INFORMATION PRIVACY PROTECTION***

*Sec.*

*1001. Short title.*

*1002. Definitions.*

*1003. Privacy protection for customer information of financial institutions.*

*1004. Administrative enforcement.*

*1005. Civil liability.*

*1006. Criminal penalty.*

1007. Relation to State laws.

1008. Agency guidance.

### **§ 1001. Short title**

*This title may be cited as the “Financial Information Privacy Act”.*

### **§ 1002. Definitions**

*For purposes of this title, the following definitions shall apply:*

(1) *CUSTOMER.*—The term “customer” means, with respect to a financial institution, any person (or authorized representative of a person) to whom the financial institution provides a product or service, including that of acting as a fiduciary.

(2) *CUSTOMER INFORMATION OF A FINANCIAL INSTITUTION.*—The term “customer information of a financial institution” means any information maintained by or for a financial institution which is derived from the relationship between the financial institution and a customer of the financial institution and is identified with the customer.

(3) *DOCUMENT.*—The term “document” means any information in any form.

(4) *FINANCIAL INSTITUTION.*—

(A) *IN GENERAL.*—The term “financial institution” means any institution engaged in the business of providing financial services to customers who maintain a credit, deposit, trust, or other financial account or relationship with the institution.

(B) *CERTAIN FINANCIAL INSTITUTIONS SPECIFICALLY INCLUDED.*—The term “financial institution” includes any depository institution (as defined in section 19(b)(1)(A) of the Federal Reserve Act), any broker or dealer, any investment adviser or investment company, any insurance company, any loan or finance company, any credit card issuer or operator of a credit card system, and any consumer reporting agency that compiles and maintains files on consumers on a nationwide basis (as defined in section 603(p)).

(C) *SECURITIES INSTITUTIONS.*—For purposes of subparagraph (B)—

(i) the terms “broker” and “dealer” have the meanings provided in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

(ii) the term “investment adviser” has the meaning provided in section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)); and

(iii) the term “investment company” has the meaning provided in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3).

(D) *FURTHER DEFINITION BY REGULATION.*—The Federal Trade Commission, after consultation with Federal banking agencies and the Securities and Exchange Commission, may prescribe regulations clarifying or describing the types of institutions which shall be treated as financial institutions for purposes of this title.



**§ 1003. Privacy protection for customer information of financial institutions**

(a) *PROHIBITION ON OBTAINING CUSTOMER INFORMATION BY FALSE PRETENSES.*—It shall be a violation of this title for any person to obtain or attempt to obtain, or cause to be disclosed or attempt to cause to be disclosed to any person, customer information of a financial institution relating to another person—

(1) by making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a financial institution;

(2) by making a false, fictitious, or fraudulent statement or representation to a customer of a financial institution; or

(3) by providing any document to an officer, employee, or agent of a financial institution, knowing that the document is forged, counterfeit, lost, or stolen, was fraudulently obtained, or contains a false, fictitious, or fraudulent statement or representation.

(b) *PROHIBITION ON SOLICITATION OF A PERSON TO OBTAIN CUSTOMER INFORMATION FROM FINANCIAL INSTITUTION UNDER FALSE PRETENSES.*—It shall be a violation of this title to request a person to obtain customer information of a financial institution, knowing that the person will obtain, or attempt to obtain, the information from the institution in any manner described in subsection (a).

(c) *NONAPPLICABILITY TO LAW ENFORCEMENT AGENCIES.*—No provision of this section shall be construed so as to prevent any action by a law enforcement agency, or any officer, employee, or agent of such agency, to obtain customer information of a financial institution in connection with the performance of the official duties of the agency.

(d) *NONAPPLICABILITY TO FINANCIAL INSTITUTIONS IN CERTAIN CASES.*—No provision of this section shall be construed so as to prevent any financial institution, or any officer, employee, or agent of a financial institution, from obtaining customer information of such financial institution in the course of—

(1) testing the security procedures or systems of such institution for maintaining the confidentiality of customer information;

(2) investigating allegations of misconduct or negligence on the part of any officer, employee, or agent of the financial institution; or

(3) recovering customer information of the financial institution which was obtained or received by another person in any manner described in subsection (a) or (b).

(e) *NONAPPLICABILITY TO INSURANCE INSTITUTIONS FOR INVESTIGATION OF INSURANCE FRAUD.*—No provision of this section shall be construed so as to prevent any insurance institution, or any officer, employee, or agent of an insurance institution, from obtaining information as part of an insurance investigation into criminal activity, fraud, material misrepresentation, or material nondisclosure that is authorized for such institution under State law, regulation, interpretation, or order.

(f) *NONAPPLICABILITY TO CERTAIN TYPES OF CUSTOMER INFORMATION OF FINANCIAL INSTITUTIONS.*—No provision of this section shall be construed so as to prevent any person from obtaining cus-

tomers information of a financial institution that otherwise is available as a public record filed pursuant to the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934).

**§ 1004. Administrative enforcement**

(a) *ENFORCEMENT BY FEDERAL TRADE COMMISSION.*—Except as provided in subsection (b), compliance with this title shall be enforced by the Federal Trade Commission in the same manner and with the same power and authority as the Commission has under the title VIII, the Fair Debt Collection Practices Act, to enforce compliance with such title.

(b) *ENFORCEMENT BY OTHER AGENCIES IN CERTAIN CASES.*—

(1) *IN GENERAL.*—Compliance with this title shall be enforced under—

(A) section 8 of the Federal Deposit Insurance Act, in the case of—

(i) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(ii) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act, by the Board;

(iii) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System and national nonmember banks) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; and

(iv) savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation, by the Director of the Office of Thrift Supervision; and

(B) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union.

(2) *VIOLATIONS OF THIS TITLE TREATED AS VIOLATIONS OF OTHER LAWS.*—For the purpose of the exercise by any agency referred to in paragraph (1) of its powers under any Act referred to in that paragraph, a violation of this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in paragraph (1), each of the agencies referred to in that paragraph may exercise, for the purpose of enforcing compliance with this title, any other authority conferred on such agency by law.

(3) *RESTITUTION.*—In the case of any failure by an entity referred to in paragraph (1) to comply with the requirements of this title, an agency referred to in such paragraph may require such entity to make restitution to any person harmed by such failure in the manner provided under section 8(b)(6)(A) of the

*Federal Deposit Insurance Act or section 206(e)(3)(A) of the Federal Credit Union Act, as the case may be, without regard to clauses (i) and (ii) of such sections, and in an amount equal to the sum of the amounts determined under each of the following subparagraphs:*

(A) *ACTUAL DAMAGES.*—*The greater of—*

*(i) the amount of any actual damage sustained by the person as a result of such failure; or*

*(i) any amount received by the entity which failed to comply with this title, including an amount equal to the value of any nonmonetary consideration, as a result of the action which constitutes such failure.*

(B) *ADDITIONAL DAMAGES.*—*Such additional amount as the agency may determine to be appropriate under the circumstances.*

(c) *STATE ACTION FOR VIOLATIONS.*—

(1) *AUTHORITY OF STATES.*—*In addition to such other remedies as are provided under State law, if the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating this title, the State—*

*(A) may bring an action to enjoin such violation in any appropriate United States district court or in any other court of competent jurisdiction;*

*(B) may bring an action on behalf of the residents of the State to recover damages of not more than \$1,000 for each violation; and*

*(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorney fees as determined by the court.*

(2) *RIGHTS OF FEDERAL REGULATORS.*—

(A) *PRIOR NOTICE.*—*The State shall serve prior written notice of any action under paragraph (1) upon the Federal Trade Commission and—*

*(i) in the case of an action which involves a financial institution described in section 1004(b)(1), the agency referred to in such section with respect to such institution; or*

*(ii) in the case of an action which involves a financial institution subject to regulation by the Securities and Exchange Commission, such Commission.*

*The State shall provide the Federal Trade Commission and any such agency with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action.*

(B) *RIGHT TO INTERVENE.*—*The Federal Trade Commission or an agency described in subsection (b) shall have the right—*

*(i) to intervene in an action under paragraph (1);*

*(ii) upon so intervening, to be heard on all matters arising therein;*

*(iii) to remove the action to the appropriate United States district court; and*

(iv) to file petitions for appeal.

(3) *INVESTIGATORY POWERS.*—For purposes of bringing any action under this subsection, no provision of this subsection shall be construed as preventing the chief law enforcement officer, or an official or agency designated by a State, from exercising the powers conferred on the chief law enforcement officer or such official by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(4) *LIMITATION ON STATE ACTION WHILE FEDERAL ACTION PENDING.*—If the Federal Trade Commission or any agency described in subsection (b) has instituted a civil action for a violation of this title, no State may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Federal Trade Commission or such agency for any violation of this title that is alleged in that complaint.

(d) *NOTICE TO SEC OF ACTIONS.*—The Federal Trade Commission shall notify the Securities and Exchange Commission whenever the Federal Trade Commission initiates an investigation with respect to a financial institution subject to regulation by the Securities and Exchange Commission.

#### **§ 1005. Civil liability**

Any person, other than a financial institution, who fails to comply with any provision of this title with respect to any financial institution or any customer information of a financial institution shall be liable to such financial institution or the customer to whom such information relates in an amount equal to the sum of the amounts determined under each of the following paragraphs:

(1) *ACTUAL DAMAGES.*—The greater of—

(A) the amount of any actual damage sustained by the financial institution or customer as a result of such failure; or

(B) any amount received by the person who failed to comply with this title, including an amount equal to the value of any nonmonetary consideration, as a result of the action which constitutes such failure.

(2) *ADDITIONAL DAMAGES.*—Such additional amount as the court may allow.

(3) *ATTORNEYS' FEES.*—In the case of any successful action to enforce any liability under paragraph (1) or (2), the costs of the action, together with reasonable attorneys' fees.

#### **§ 1006. Criminal penalty**

(a) *IN GENERAL.*—Whoever knowingly and intentionally violates, or knowingly and intentionally attempts to violate, section 1003 shall be fined in accordance with title 18, United States Code, or imprisoned for not more than 5 years, or both.

(b) *ENHANCED PENALTY FOR AGGRAVATED CASES.*—Whoever violates, or attempts to violate, section 1003 while violating another law of the United States or as part of a pattern of any illegal activity involving more than \$100,000 in a 12-month period shall be

*fined twice the amount provided in subsection (b)(3) or (c)(3) (as the case may be) of section 3571 of title 18, United States Code, imprisoned for not more than 10 years, or both.*

**§ 1007. Relation to State laws**

*(a) IN GENERAL.—This title shall not be construed as superseding, altering, or affecting the statutes, regulations, orders, or interpretations in effect in any State, except to the extent that such statutes, regulations, orders, or interpretations are inconsistent with the provisions of this title, and then only to the extent of the inconsistency.*

*(b) GREATER PROTECTION UNDER STATE LAW.—For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this title if the protection such statute, regulation, order, or interpretation affords any person is greater than the protection provided under this title.*

**§ 1008. Agency guidance**

*In furtherance of the objectives of this title, each Federal banking agency (as defined in section 3(z) of the Federal Deposit Insurance Act) and the Securities and Exchange Commission or self-regulatory organizations, as appropriate, shall review regulations and guidelines applicable to financial institutions under their respective jurisdictions and shall prescribe such revisions to such regulations and guidelines as may be necessary to ensure that such financial institutions have policies, procedures, and controls in place to prevent the unauthorized disclosure of customer financial information and to deter and detect activities proscribed under section 1003.*

